

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BVM Helping Hands)	
)	
Application for Construction Permit for)	File No. BNPED-20071022BJE
New Noncommercial Educational FM Station)	Facility ID No. 175700
Antioch, Illinois)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 12, 2014

Released: June 13, 2014

By the Commission:

1. In this Memorandum Opinion and Order, we deny the Application for Review filed by Chicago Public Media, Inc. (“CPM”) on July 13, 2011.¹ CPM seeks review of a June 13, 2011 action by the Media Bureau (“Bureau”),² which denied CPM’s Petition for Reconsideration of a December 9, 2010, letter decision that: (1) granted the above-captioned application (“Application”) by BVM Helping Hands (“BVM”) for a new noncommercial educational (“NCE”) FM station in Antioch, Illinois; and (2) dismissed CPM’s mutually-exclusive application for a new NCE FM station in Kenosha, Wisconsin.³

2. BVM and CPM filed mutually-exclusive (“MX”) applications in the October 2007 NCE filing window.⁴ At the time the Application was filed, NCE applicants were required to either protect nearby Channel 6 TV stations or submit a consent letter from each affected TV station, agreeing to the proposed NCE facilities.⁵ On October 27, 2009, a new processing policy became effective under which NCE applicants were no longer required to submit Channel 6 consent letters with respect to affected TV stations that had ceased analog operations.⁶ This policy was implemented by public notices released in April and October of 2009, which established a clear, fair, and transparent process for licensees and applicants to take advantage of the cessation of Channel 6 analog operations.⁷ On September 2, 2010,

¹ Prior to its corporate name change, CPM was known as The WBEZ Alliance, Inc.

² *Ernest T. Sanchez, Esq.*, Letter, Ref. No. 1800B3-MM (MB 2011) (“*Reconsideration Decision*”).

³ *Ernest T. Sanchez, Esq.*, Letter, Ref. No. 1800B3-KAD (MB 2010) (“*Staff Decision*”).

⁴ *Media Bureau Identifies Groups of Mutually-Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, Public Notice, 23 FCC Rcd 14730 (MB 2008).

⁵ 47 C.F.R. § 73.525 (2007) (“Section 73.525”).

⁶ *See Media Bureau Establishes October 27, 2009, Initial Filing Date for Acceptance of Certain Noncommercial Educational FM Station Minor Change Applications*, Public Notice, 24 FCC Rcd 12598 (MB 2009).

⁷ *Id.*; *Media Bureau Provides Guidance to NCE FM Stations Regarding Television Channel 6 Protection Requirements*, Public Notice, 24 FCC Rcd 3916 (MB 2009).

BVM was identified as the tentative selectee from MX Group 545.⁸ On December 9, 2010, the Application was granted by letter (the *Staff Decision*).

3. As it did previously, CPM argues on review that BVM's Application should have been dismissed for its alleged failure to provide a valid consent letter from Channel 6 TV Station WITI, Milwaukee, Wisconsin. CPM cites various alleged defects in BVM's consent letter from Station WITI, including that it was impermissibly conditional and invalidated by the assignment of Station WITI to a new licensee.⁹ Grant of the Application, CPM contends, was unfair to NCE applicants whose applications had been dismissed prior to October 27, 2009, for failure to comply with Section 73.525.¹⁰ CPM also argues that BVM's failure to provide an updated consent letter from the Station WITI licensee violated Section 1.65 of the Rules.¹¹

4. Upon review of the Application for Review and the entire record, we conclude that CPM has not demonstrated that the Bureau erred in granting BVM's Application without requiring Channel 6 concurrence under Section 73.525. After October 27, 2009, with WITI's cessation of analog operations, WITI's concurrence was no longer required.¹² And the Bureau correctly noted that, even if the Application had been dismissed, BVM could have cured the defect by requesting reconsideration and reinstatement *nunc pro tunc* within 30 days of dismissal.¹³ Therefore, the Bureau reasonably declined to take adverse action based solely on an application's earlier acceptability, when subsequent events—i.e., a change in applicable law and WITI's termination of analog operations on Channel 6—resulted in a fully acceptable application at the time of processing.¹⁴

5. With respect to CPM's Section 1.65(a) allegations, we agree with the Bureau that CPM has not demonstrated that a rule violation occurred in this case. Section 1.65(a) of the Rules requires an applicant to supplement an application whenever the information furnished in it is "no longer substantially accurate and complete in all significant respects" or "whenever there has been a substantial change as to any other matter which may be of decisional significance." We concur with the Bureau's finding that the information on record did not necessarily establish that the assignment of Station WITI and subsequent *pro forma* commercial reorganization of the new licensee resulted in the cancellation of the WITI consent. Therefore, CPM has not demonstrated that the type of change occurred that would require BVM to supplement its Application pursuant to Section 1.65.¹⁵

⁸ See *Comparative Consideration of 24 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 12887,12911 (2010).

⁹ See BALCT-20080110ACC (assignment of Station WITI from Fox Television Stations, Inc. ("Fox") to Foxco Acquisition Sub, LLC ("Foxco"), granted on June 9, 2008, and consummated on July 14, 2008); File No. BALCT-20080604AAV (*pro forma* assignment of Station WITI from Foxco to Community Television of Wisconsin License, LLC ("CTW"), granted on June 17, 2008, and consummated on July 14, 2008).

¹⁰ Application for Review at 16-17.

¹¹ 47 C.F.R. § 1.65(a).

¹² See BDERCDT-20090710ACH (reporting that WITI ceased analog operations on Channel 6 on June 12, 2009, the DTV transition deadline).

¹³ *Reconsideration Decision* at 3 (citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR.2d 776 (1984) (as subsequently published in the Federal Register, 49 Fed. Reg. 47331, 47332 (Dec. 3, 1984)).

¹⁴ *Reconsideration Decision* at 3 (citing *WKVE, Semora, North Carolina*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411, 23423 (2003); *John Joseph McVeigh, Esq.*, Letter, 25 FCC Rcd 3572, 3576 (MB 2010) ("new facts may eliminate an acceptability defect").

¹⁵ The "Stock and Asset Purchase Agreement" submitted in conjunction with the assignment from Fox to Foxco (which did not include schedules) does not appear to explicitly address the matter of the WITI consent letter. See (continued....)

6. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁶ and Section 1.115(g) of the Commission's rules,¹⁷ the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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File No. BALCT-20080110ACC, Exhibit 13. Likewise, the transaction information provided with the *pro forma* assignment to CTW is silent on this point. As noted by the Bureau in the *Reconsideration Decision*, the unsworn e-mail dated August 17, 2010, from counsel for CTW provided by CPM as support for its contention that the WITI consent lapsed after the sale of the station is very general, describing only CTW's decision not to provide interference consent letters in response to requests that it had received "in the winter." Since BVM states that it did not make such a request, the e-mail, which makes no mention of BVM's consent letter already issued by WITI, does not establish that either Foxco or CTW rescinded such consent.

¹⁶ 47 U.S.C. § 155(c)(5).

¹⁷ 47 C.F.R. § 1.115(g).